

MACS – CSAL SHIPPING AGREEMENT

FMC Agreement No. 201237

A Cooperative Working Agreement

Expiration Date: None

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ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of this Agreement is the MACS-CSAL Shipping Agreement (hereinafter referred to as the “**Agreement**”).

ARTICLE 2: PARTIES TO THE AGREEMENT

The parties to the Agreement are:

MACS Maritime Carrier Shipping Pte. Ltd. (“**MACS**”)
78 Shenton Way #1602
Singapore 079120

CSAL Canada-States-Africa Line Inc. (“**CSAL**”)
478 McGill Street
Montreal, QC H2Y 2H2
Canada

(each hereinafter referred to individually as a “**Party**,” and collectively as the “**Parties**”).

ARTICLE 3: PURPOSE OF THE AGREEMENT

Subject to receipt of necessary regulatory approvals, the purpose of this Agreement is to permit the Parties to charter vessel space from one another and to utilize other related services in connection with the carriage of cargo on terms and conditions agreed to by the Parties in the trade within the geographic scope set forth in Article 4, and to authorize the Parties to engage in operational and commercial cooperation in support thereof to the fullest extent permitted by the U.S. Shipping Act of 1984, as amended (the “**Shipping Act**”), the Republic of South Africa Competition Act, 1998, as amended, and other applicable law.

ARTICLE 4: SCOPE OF AGREEMENT

This Agreement covers the transportation of cargoes moving in all-water or intermodal service under port-to-port or through bills of lading, direct or by transshipment, in the trades and various sub-trades between ports on the Atlantic and Gulf Coasts of Mexico, the United States and Canada, and inland points served therefrom, on the one hand, and ports and points in South Africa, Namibia, Dakar, Senegal, Angola, Nigeria, Tanzania, Kenya and Mozambique, and inland points served therefrom, on the other hand, in both directions (the “**Trade**”)¹.

¹ References to trades outside the foreign commerce of the United States or otherwise not subject to the U.S. Shipping Act are for informational purposes only and are not intended to confer jurisdiction over such trades under the U.S. Shipping Act.

ARTICLE 5: AGREEMENT AUTHORITY**(1) Space Charter.**

(a) The Parties are authorized to charter space on their respective vessels to each other for the carriage of cargo and equipment in the Trade on such terms as the Parties may from time to time agree.

(b) To the extent a Party may from time to time have requirements for chartered space in the Trade, it shall first seek to charter such space from the other Party.

(c) Compensation for any space chartered pursuant to this Agreement shall be upon such terms and at such hire as the Parties may from time to time agree. Billing and payment terms and conditions shall also be as agreed by the Parties from time to time, with the intention that accounts be settled on a voyage-by-voyage basis.

(d) Space chartered hereunder may not be sub-chartered to another carrier unless and to the extent agreed to by both Parties (it being acknowledged that MACS has an existing approved slot charter agreement with CMA-CGM that is independent of, and outside the scope of, this Agreement).

(e) Each Party shall be responsible for any costs incurred in connection with fines or taxes assessed on any of their cargo that is carried pursuant to this Agreement or in respect of the vessel/s operated by each of them (save to the extent that the other Party has otherwise agreed in writing to be liable for any such costs).

(2) Carrier Operations.

(a) The Parties are authorized to exchange information on any matter within the scope of this Agreement, and to discuss and agree upon any and all operational and administrative functions related hereto, including but not limited to forecasting, stowage, claims, indemnities, conditions of carriage; provided however that the authority granted hereunder shall not include the authority to discuss or agree upon any of the following: (i) rates or charges in tariffs or service agreements; (ii) any pooling or apportionment of cargo, (iii) any pooling or division of revenues, expenses or earnings; (iv) rationalization of capacity; (v) any service contract matter; or (vi) a joint service.

(b) Without limiting Section 2(a) of this Article 5, the Parties are authorized to discuss space requirements and the availability of space on their respective vessels for cargo and equipment in the trade; the timing of the provision of space; procedures for booking space, for documentation, for special cargo handling, and for other operational and administrative matters relating to chartering and transportation provided under this Agreement; on the terms and conditions for the use and interchange of equipment in connection therewith; and on arrangements for the use of terminals and related services and facilities, and to enter into working arrangements with third parties for shoreside services relating to transportation provided under this Agreement.

(c) Notwithstanding any provisions of Article 5 to the contrary, each Party shall maintain its own customer and freight accounts, do its own marketing and sales, and issue its own bills of lading. Bills of lading shall show the responsible Party as “carrier” and be signed in accordance with customary practice. Each Party shall be a “vessel operating common carrier” for purposes of complying with applicable US law and regulation. Each Party shall independently hire its own agent(s) at each of the ports and its port agent will independently file all necessary customs documentation, including customs entries and manifests for the cargo covered by each Party’s bills of lading.

(d) Except as provided in Article 9, each Party shall bear its own costs for its office space, personnel, marketing, communications, travel, insurance, accounting, taxes, legal and claims (without prejudice in the case of claims for loss or damage to cargo to such rights of indemnification by a non-carrying party against the carrying party as may be provided by the applicable tariff, bill of lading, or as otherwise agreed in writing by the Parties).

(3) Administration.

In order to facilitate efficient administration of the Parties’ operations under this Agreement, MACS is appointed and authorized to act as coordinator for the activities authorized pursuant to this Agreement, with authority to:

(a) Provide for the administration and due documentation of agreed-upon space charters, on a voyage-by-voyage basis;

(b) report to the Parties on the conduct of the arrangements contemplated in this Agreement, on such basis as it deems appropriate; and

(c) act on behalf of the Parties with respect to such other matters within the scope of this Agreement as may be agreed.

In addition to the foregoing, the Parties are authorized to enter into agreements concerning other routine operational or administrative matters in furtherance of this Agreement, provided that any such further agreement not exempt from filing under the Shipping Act may not go into effect unless and until filed and effective under the Shipping Act.

ARTICLE 6: AUTHORIZATION

The following persons shall have authority to sign and file this Agreement, any subsequent modifications thereto, and any supporting information with the FMC or any other governmental entities with mandatory jurisdiction over this Agreement and to respond to any requests for information from the FMC, and such persons are also authorized to delegate such authority:

(a) A designated senior executive of each Party; or

(b) Legal counsel for a Party.

ARTICLE 7: BREACH OF AGREEMENT

(1) Each Party shall be responsible for the acts or omissions of its respective officers, employees, agents, and sub-agents, and of its parent, subsidiary, and affiliated companies, as well as of any other persons, firms, or corporations in any manner subject to its control (collectively "**Associates**"), which acts or omissions may in any manner affect the Trade covered by this Agreement. Every act or omission of any Associate in violation of this Agreement shall be imputed to the applicable Party and shall constitute a violation hereof by such Party as fully as if done by the Party itself.

(2) The existence of a breach and the assessment of any damages therefor shall be determined by arbitration under Article 8.

ARTICLE 8: ARBITRATION

Should any dispute arise between or among any Parties concerning or based upon this Agreement, the matter in dispute shall in all cases be referred for resolution to a single arbitrator in London, England under the Rules of the London Maritime Arbitration Association. Except by agreement of the Parties to the dispute, there shall be no pre-hearing discovery. The decision of the arbitrator shall be final, binding, and not subject to further review and may be enforced by a prevailing Party in any court having jurisdiction. The costs and expenses of such arbitration (including reasonable attorney's fees and costs incurred by a Party) shall be borne by the non-prevailing Party or as the arbitrator shall otherwise determine.

ARTICLE 9: EXPENSES

All costs for the operation and administration of this Agreement (excluding travel costs for expenses of CSAL attendance at any meetings of the Parties) shall be for the account of MACS.

ARTICLE 10: NON-ASSIGNMENT

No Party shall assign or transfer this Agreement or all, or any part of, its rights or liabilities hereunder to any person, entity or corporation without the prior written consent of the other Party.

ARTICLE 11: MODIFICATION

This Agreement may only be modified by the unanimous agreement of the Parties.

ARTICLE 12: DURATION AND TERMINATION OF AGREEMENT

(1) This Agreement shall be effective as of the later of the date it becomes effective under the Shipping Act, as amended, and the date of approval by competent authorities in the Republic of South Africa, and shall continue in effect indefinitely or until terminated by a Party on at least 4 (four) calendar months' written notice to the other Party, or in terms of Article 12, Section (2).

(2) Notwithstanding the foregoing, the Agreement may be terminated by a Party upon written notice to the other Party in the event:

(a) a Party breaches this Agreement and such breach remains uncured for a period of four (4) weeks following a request by the other Party;

(b) a ruling for the commencement of bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings, special liquidation or other insolvency proceedings similar to the foregoing has been given with respect to either Party, or a Party has filed a petition for any of such proceedings;

(c) a Party has suspended payments or become insolvent;

(d) a Party is dissolved other than through merger, or any cause for its dissolution arises; or

(e) there is a change in control of a Party not approved by the other Party. A change in control of a Party shall mean the occurrence of any of the following events:

(i) a third party acquires the majority of all voting rights represented by the issued shares (or limited liability company interests, or equivalent) of a Party;

(ii) another ocean common carrier acquires (1) one-third of all voting rights represented by the issued shares (or limited liability company interests, or equivalent) of a Party or (2) the number of directors nominated by such other ocean common carrier becomes one-third or more of the total number of all directors of the Party; or

(iii) a third party is reasonably deemed to otherwise have control over a Party.

ARTICLE 13: OBLIGATION OF THE MEMBERS

The Parties shall, individually and collectively, conduct their operations under this Agreement in compliance with all applicable laws and regulations; provided that nothing herein shall restrict the right of the Parties to reach agreement as to specific business activities that would otherwise not be prohibited under applicable law.

ARTICLE 14: GOVERNING LAW

The interpretation, construction, and enforcement of this Agreement, and all rights and obligations between the Parties under this Agreement, shall be governed by the laws of England, provided, however, that nothing herein shall relieve the Parties from the applicable requirements of the Shipping Act.

ARTICLE 15: SEVERABILITY

If any provision of this Agreement is determined to be invalid or unenforceable for any reason, no other provisions of this Agreement shall become invalid or unenforceable, and in such case,

the applicable provision shall be interpreted in a limited manner to the extent necessary to make such provision valid and enforceable.

ARTICLE 16: NOTICE

Any notice or other communication that one Party may be required to give or make to another Party under this Agreement shall, unless otherwise specifically provided herein, be in writing and in the English language, and be sent by email (with copy by mail) or by express service, to the addresses to be provided by each Party to the other.

ARTICLE 17: MISCELLANEOUS

Should any document, such as a related operating agreement, contain clauses and/or provisions that are or could be interpreted as being contrary to the terms of this Agreement, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized respective officers or agents. This Agreement may be executed in counterparts, each of which will constitute an original hereof.

Dated: as of 28 November 2017.

MACS Maritime Carrier Shipping Pte. Ltd.

By: Bryant E. Gardner

Name: Bryant E. Gardner

Title: Counsel

CSAL Canada-States-Africa Line Inc.

By: Steven B. Chamorides

Name: Steven B. Chamorides

Title: Legal Counsel